

**PART 18—TEMPORARY INCOME  
TAX REGULATIONS UNDER THE  
SUBCHAPTER S REVISION ACT OF  
1982**

Sec.

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SOURCE: T.D. 7872, 48 FR 3590, Jan. 26, 1983, unless otherwise noted.

**§ 18.0 Effective date of temporary regulations under the Subchapter S Revision Act of 1982.**

The temporary regulations provided under § 18.1377-1, 18.1379-1, and 18.1379-2 are effective with respect to taxable years beginning after 1982, and the temporary regulations provided under § 18.1378-1 are effective with respect to elections made after October 19, 1982.

[T.D. 8600, 60 FR 37588, July 21, 1995]

**§ 18.1371-1 Election to treat distributions as dividends during certain post-termination transition periods.**

A corporation may make an election under section 1371(e) (as amended by section 721(o) of the Act) to treat all distributions of money made during the post-termination transition period described in section 1377(b)(1)(A) as coming out of the corporation's earnings and profits (after earnings and profits have been eliminated, the distributions are applied against and reduce the adjusted basis of the stock). The election may be made only with the consent of each shareholder to whom the corporation makes a distribution (whether or not it is a cash distribution) during such post-termination transition period. Any such election shall be made by the corporation by attaching to its income tax return for the C year in which such post-termination transition period ends a statement which clearly indicates that the corporation elects to have section 1371(e)(1) not apply to all distributions

made during such post-termination transition period. The election shall not be effective unless such statement is signed by a person authorized to sign the return required to be filed under section 6012 and by each shareholder required to consent to the election.

[T.D. 7976, 49 FR 35493, Sept. 10, 1984]

**§ 18.1378-1 Taxable year of S corporation.**

(a) *In general.* No corporation may make an election to be an S corporation for any taxable year unless the taxable year is a permitted year. In addition, an S corporation shall not change its taxable year to any taxable year other than a permitted year. A permitted year is a taxable year ending on December 31 or is any other taxable year for which the corporation establishes a business purpose (within the meaning of § 1.442-1(b)(1)) to the satisfaction of the Commissioner.

(b) *Corporations qualifying for automatic change of taxable year to a taxable year ending December 31 and corporations adopting a taxable year ending December 31—(1) Qualification for automatic change.* Notwithstanding section 442 (relating to change of taxable year) and the regulations thereunder, a corporation may automatically change its taxable year to a taxable year ending on December 31 to comply with the permitted year requirement if all of its principal shareholders have taxable years ending on December 31, or if all of its principal shareholders concurrently change to such taxable year. A shareholder may not change his or her taxable year without securing prior approval from the Commissioner. See section 442 and the regulations thereunder. For purposes of this paragraph, a principal shareholder is a shareholder having 5% or more of the issued and outstanding stock of the corporation. See paragraph (d) of this section in the case where a corporation does not qualify under this subparagraph for an automatic change of its taxable year to a taxable year ending on December 31.

(2) *Effect of filing an election—(i) General rule.* The filing of an election to be an S corporation by a corporation that has, prior to making the election, adopted a taxable year ending other than on December 31, and that qualifies

under paragraph (b)(1) of this section for an automatic change of its taxable year to a taxable year ending on December 31, shall constitute such automatic change for the first taxable year for which the election is effective. The filing of an election to be an S corporation by a corporation that has not, prior to making the election, adopted a taxable year shall constitute the adoption of a taxable year (or, if the corporation qualifies under paragraph (b)(1) of this section for the automatic change, the change to a taxable year) ending on December 31 for the first taxable year for which the election is effective. Where the taxable year has been changed pursuant to this subdivision and paragraph (b)(1) of this section, the first taxable year for which the election shall be effective shall commence on the first day of the first taxable year for which the election would have been effective if the taxable year had not been changed and shall end on December 31 of that taxable year. See § 1.1362-6(b)(2)(ii) of this chapter for the time within which to make an election to be an S corporation.

(ii) *Request to retain (or adopt) a taxable year ending other than December 31.* A request to retain (or adopt) a taxable year ending other than on December 31 by a corporation subject to paragraph (b)(2)(i) of this section shall (except as provided in paragraph (b)(3)(ii) of this paragraph and in paragraph (c) of this section) be made on Form 2553 when the election to be an S corporation is filed. See § 1.1362-6(b)(2)(i) of this chapter for the manner of making an election to be an S corporation. If such corporation receives permission to retain (or adopt) a taxable year ending other than on December 31, the election shall be effective and the provisions of paragraph (b)(2)(i) of this section shall be inapplicable. Denial of the request shall render the election ineffective unless—

(A) The request is accompanied by another request in which the corporation states that, in the event the request to retain (or adopt) a taxable year ending other than on December 31 is denied, it chooses to be governed by the provisions of paragraph (b)(2)(i) of this section, or

(B) The Commissioner waives the requirement to file the additional request described in paragraph (b)(2)(ii)(A) of this section and permits the corporation to be governed by the provisions of paragraph (b)(2)(i) of this section.

(c) [Reserved]

(d) *Elections by corporations not qualifying for automatic change.* An election to be an S corporation made after October 19, 1982, by a corporation that has a taxable year ending other than on December 31, and that does not qualify under paragraph (b)(1) of this section for an automatic change of its taxable year to a taxable year ending on December 31, shall be ineffective unless the corporation has first secured a permitted year. At the request of a corporation wishing to secure a permitted year, the Commissioner shall make a determination that—

(1) The corporation's taxable year is a permitted year, or

(2) The corporation may, under § 1.442-1(b)(1), change its taxable year to a taxable year ending on December 31, or

(3) The corporation may, under § 1.442-1(b)(1), change its taxable year to a taxable year ending other than on December 31, which taxable year shall be a permitted year.

[T.D. 7872, 48 FR 3590, Jan. 26, 1983; 48 FR 33481, July 22, 1983, as amended by T.D. 8123, 52 FR 3623, Feb. 5, 1987; T.D. 8600, 60 FR 37589, July 21, 1995]

#### § 18.1379-1 Transitional rules on enactment.

(a) *Prior elections.* Any election that was made under section 1372(a) (as in effect before the enactment of the Subchapter S Revision Act of 1982), and that is still in effect as of the first day of a taxable year beginning in 1983, shall be treated as being an election made under section 1362(a). In addition, any election that was made under section 1371(g)(2) (as in effect before the enactment of that Act), and that is still in effect as of the first day of a taxable year beginning in 1983, shall be treated as being an election made under section 1362(d)(2).

(b) *Prior terminations.* For purposes of section 1362(g), any termination under section 1372(e) (as in effect before the